
PRELIMINARY DRAFT

No. 3292

PREPARED BY

LEGISLATIVE SERVICES AGENCY

2009 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-10.2-10; IC 34-30-2-11.4.

Synopsis: Divestment of public pension investments. Requires the public employees' retirement fund (PERF) and the state teachers' retirement fund (TRF), in the capacity of shareholders, to contact companies with certain business activities in states that sponsor terror and request that the companies cease those business activities. Prohibits PERF and TRF from investing in companies that are unresponsive to the requests. Requires PERF and TRF to sell or transfer any investments in a company that is unresponsive to the requests. Requires PERF and TRF to report to the general assembly any investments with a company with business operations in states that sponsor terror.

Effective: July 1, 2009.



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10.2-10 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]:

4 **Chapter 10. Divestment From States That Sponsor Terror**

5 **Sec. 1. The requirements for mandatory divestment contained**
6 **in this chapter are separate and distinct from the requirements for**
7 **mandatory divestment contained in IC 5-10.2-9.**

8 **Sec. 2. As used in this chapter, "active business operations"**
9 **means all business operations that are not inactive business**
10 **operations.**

11 **Sec. 3. As used in this chapter, "board" refers to the following:**

12 (1) The board of trustees of the Indiana state teachers'
13 retirement fund.

14 (2) The board of trustees of the public employees' retirement
15 fund.

16 **Sec. 4. As used in this chapter, "business operations" means**
17 **engaging in any commerce in any form in a state that sponsors**
18 **terror.**

19 **Sec. 5. (a) As used in this chapter, "company" means any of the**
20 **following:**

21 (1) A sole proprietorship.

22 (2) An organization.

23 (3) An association.

24 (4) A corporation.

25 (5) A partnership.

26 (6) A joint venture.

27 (7) A limited partnership.

28 (8) A limited liability partnership.

29 (9) A limited liability company.

30 (10) A business association.

31 **(b) The term includes all wholly owned subsidiaries, majority**



owned subsidiaries, parent companies, and affiliates of such entities or business associations that exist for profit making purposes.

Sec. 6. As used in this chapter, "cost of divestment" means the sum of the following:

- (1) The costs associated with the sale, redemption, divestment, or withdrawal of an investment.
- (2) The costs associated with the acquisition and maintenance of a replacement investment.
- (3) A cost not described in subdivision (1) or (2) that is incurred by the fund in connection with a divestment transaction.

Sec. 7. As used in this chapter, "direct holdings" means all securities of a company held directly by a fund or in an account in which the fund owns all shares or interests.

Sec. 8. As used in this chapter, "fund" refers to the following:

- (1) The Indiana state teachers' retirement fund.
- (2) The public employees' retirement fund.

Sec. 9. As used in this chapter, "inactive business operations" means the mere continued holding or renewal of rights to property previously operated to generate revenues but not presently deployed for that purpose.

Sec. 10. As used in this chapter, "indirect holdings" means all securities of a company that are:

- (1) held in an account or a fund; and
- (2) managed by one (1) or more persons:
 - (A) who are not employed by the fund; and
 - (B) in which the fund owns shares or interests together with other investors not subject to this chapter.

Sec. 11. As used in this chapter, "private market fund" means any:

- (1) private equity fund;
- (2) private equity fund of funds;
- (3) venture capital fund;
- (4) hedge fund;
- (5) hedge fund of funds;
- (6) real estate fund; or
- (7) investment vehicle;

that is not publicly traded.

Sec. 12. As used in this chapter, "scrutinized business operations" means business operations that have caused a company to become a scrutinized company.

Sec. 13. (a) As used in this chapter, "scrutinized company" means a company that meets at least one (1) of the following conditions:

- (1) The company has business operations that:



- (A) involve contracts with; or
 - (B) provide supplies or services to;
- a state sponsor of terror.

(2) A state sponsor of terror has any direct or indirect equity share in the company.

(3) The company is involved in consortiums and projects commissioned by a state sponsor of terror, and one (1) or more of the following apply:

(A) More than ten percent (10%) of the company's total revenues or assets is directly invested in or earned from a state sponsor of terror and the company has failed to take substantial action.

(B) The company has made:

(i) an investment of at least twenty million dollars (\$20,000,000); or

(ii) any combination of investments of at least ten million dollars (\$10,000,000) each that in total equals or exceeds twenty million dollars (\$20,000,000) in any twelve (12) month period;

that directly or significantly contributes to a state sponsor of terror after the Secretary of State of the United States designates the country a state sponsor of terror, and the company has failed to take substantial action.

(b) The term does not include a:

(1) social development company; or

(2) company that meets the criteria set forth in subsection (a) only because an independently owned franchisee of the company is a scrutinized company.

Sec. 14. (a) As used in this chapter, "social development company" means a company that is:

(1) licensed by the United States Department of Treasury under the Federal Trade Sanction Reform and Export Enhancement Act of 2000 (P.L. 106-387); or

(2) lawfully operating under the laws of another country whose primary purpose in a state sponsor of terror is to provide humanitarian goods or services.

(b) A company described in subsection (a)(2) includes a company whose primary purpose is to provide:

(1) food;

(2) medicine or medical equipment;

(3) agricultural supplies or infrastructure;

(4) educational opportunities;

(5) journalism related activities;

(6) spiritual related activities or materials;

(7) information or information materials;

(8) general consumer goods; or



(9) services of a purely clerical or reporting nature;
to aid the inhabitants of a state sponsor of terror.

Sec. 15. As used in this chapter, "state sponsor of terror" means a country determined by the Secretary of State of the United States to have repeatedly provided support for acts of international terrorism.

Sec. 16. As used in this chapter, "substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one (1) year and to refrain from any new business operations.

Sec. 17. (a) Not later than March 30, 2010, each board shall make a good faith effort to identify all scrutinized companies in which the fund administered by the board has direct or indirect holdings.

(b) In carrying out its responsibilities under subsection (a), each board may use existing research or contract with a research firm.

(c) A board or a research firm with which the board contracts under subsection (b) may take any of the following actions:

(1) Review publicly available information regarding companies with business operations in states that sponsor terror.

(2) Contact other institutional investors that have divested from or invest in companies with business operations in states that sponsor terror.

(3) Contact asset managers that are contracted by the fund and that invest in companies with business operations in states that sponsor terror.

(d) Not later than the first meeting of the board after March 30, 2010, each board shall compile the names of all scrutinized companies into a scrutinized company list and indicate whether each scrutinized company has active or inactive business operations in a state sponsor of terror.

(e) Each board shall update its scrutinized company list at least on an annual basis based on evolving information from sources described in subsections (b) and (c).

(f) If the Secretary of State of the United States determines that a country is a state sponsor of terror after June 30, 2009, each board shall add any additional scrutinized company resulting from the Secretary of State's determination when each board updates its scrutinized company list under subsection (e).

Sec. 18. After a board creates or updates the scrutinized company list under section 17 of this chapter, the board shall immediately identify the companies on the scrutinized company list in which the fund administered by the board has direct or indirect holdings.

Sec. 19. (a) Each fund shall send to each scrutinized company:



(1) that is identified under section 18 of this chapter as one in which the fund has direct or indirect holdings; and

(2) that has only inactive business operations;

a written notice concerning the provisions of this chapter and a statement encouraging the company to continue to refrain from initiating active business operations in a state sponsor of terror until the company is able to avoid scrutinized business operations altogether.

(b) Each fund shall continue to correspond on a semiannual basis with scrutinized companies:

(1) in which the fund has direct or indirect holdings; and

(2) that have only inactive business operations.

Sec. 20. (a) Each fund shall send to each scrutinized company:

(1) that is identified under section 18 of this chapter as one in which the fund has direct or indirect holdings; and

(2) that has active business operations;

a written notice concerning the contents of this chapter and a statement indicating that the fund's holdings in the company may become subject to divestment by the fund.

(b) A notice sent under this section must:

(1) offer the company the opportunity to clarify the company's state sponsor of terror related activities; and

(2) encourage the company to:

(A) cease its scrutinized business operations; or

(B) convert the company's operations to inactive business operations in order to avoid divestment by the fund of the fund's holdings in the company;

not later than one hundred eighty (180) days after the date of the notice.

Sec. 21. (a) If, within one hundred eighty (180) days after a fund first sends written notice to a company under section 20 of this chapter, the company ceases scrutinized business operations, the company shall be removed from the fund's scrutinized company list, and sections 22, 23, 24, and 25 of this chapter do not apply to the company unless the company resumes scrutinized business operations.

(b) If, within one hundred eighty (180) days after a fund first sends written notice to a company under section 20 of this chapter, the company converts its scrutinized active business operations to inactive business operations, the company is subject to section 19 of this chapter.

Sec. 22. (a) Except as provided in sections 24 and 25 of this chapter, if a company continues to have scrutinized active business operations one hundred eighty (180) days after a fund first sends written notice to the company under section 20 of this chapter, the fund shall sell, redeem, divest, or withdraw all publicly traded



securities of the company that are held by the fund, as follows:

(1) At least fifty percent (50%) of the securities shall be removed from the fund's assets under management within three (3) years after the company's appearance on the scrutinized company list.

(2) At least seventy-five percent (75%) of the securities shall be removed from the fund's assets under management within four (4) years after the company's appearance on the scrutinized company list.

(3) One hundred percent (100%) of the securities shall be removed from the fund's assets under management within five (5) years after the company's appearance on the scrutinized company list.

(b) If a company that ceased scrutinized active business operations following engagement under section 20 of this chapter resumes scrutinized active business operations, the company shall immediately be placed on the scrutinized company list and shall remain on the scrutinized company list while the company continues to have active business operations. A fund that has holdings in the company shall send a written notice to the company as described in section 20 of this chapter indicating that the company has been placed on the scrutinized company list and is subject to divestment. The fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company as provided in subsection (a) based on the date the company is placed back on the scrutinized company list.

(c) A board is not required to divest the board's holdings in a passively managed commingled fund that includes a scrutinized company with active business operations in a state sponsor of terror if the estimated cost of divestment of the commingled fund is greater than ten percent (10%) of the total value of the scrutinized companies with active business operations held in the commingled fund. The board shall include any commingled fund that includes a scrutinized company that is exempted from divestment under this subsection in the board's report submitted to the legislative council under section 26 of this chapter.

Sec. 23. Except as provided in sections 24 and 25 of this chapter, a fund shall not acquire securities of companies on the scrutinized company list that have active business operations.

Sec. 24. If the government of the United States declares that a company on the scrutinized company list with active business operations in a state sponsor of terror is excluded from any federal sanctions relating to a state sponsor of terror, the company is not subject to divestment or investment prohibition under this chapter.

Sec. 25. (a) Notwithstanding any provision to the contrary, sections 22 and 23 of this chapter do not apply to indirect holdings



in a private market fund that includes a scrutinized company with active business operations in a state sponsor of terror.

(b) If a fund has holdings that are excluded under subsection (a), the fund shall submit letters to the managers of the private market fund requesting that the managers remove the securities of the scrutinized companies with active business operations from the fund or create a similar private market fund that does not include the securities of the scrutinized company with active business operations. If the manager creates such a similar fund, the fund having holdings excluded under subsection (a) shall replace all applicable investments with investments in the similar fund in a period consistent with prudent investing standards.

Sec. 26. (a) On or before November 1, 2010, and thereafter as directed by the legislative council, each board shall submit a report in an electronic format under IC 5-14-6 to the legislative council. Notwithstanding IC 5-14-6-4(b)(2), the submission of a report under this subsection to the executive director of the legislative services agency fulfills the board's requirement to send a copy of the report to each member of the general assembly using the member's senate or house of representatives electronic mail address.

(b) A report submitted by the board of a fund under this section must include at least the following information, as of the date of the report:

- (1) A copy of the fund's scrutinized company list.
- (2) A summary of correspondence between the fund and companies under sections 19 and 20 of this chapter.
- (3) All investments sold, redeemed, divested, or withdrawn by the fund in compliance with section 22 of this chapter.
- (4) All commingled funds that are exempted from divestment under section 22 of this chapter.
- (5) All companies whose securities the fund is prohibited from acquiring under section 23 of this chapter.
- (6) Any progress made under section 21 of this chapter.

Sec. 27. The provisions of this chapter regarding any country determined to be a state sponsor of terror cease to apply to that country on the earlier of the following:

- (1) The date the Secretary of State of the United States removes the country from its official list of state sponsors of terrorism.
- (2) The date Congress or the President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of foreign policy of the United States.

Sec. 28. With respect to actions taken in compliance with this



chapter, including all good faith determinations regarding companies on the scrutinized company list, a fund is exempt from any conflicting statutory or common law obligations, including any obligations with respect to choice of asset managers, investment funds, or investments for fund securities portfolios.

Sec. 29. (a) Notwithstanding any provision to the contrary, a fund may cease divesting under this chapter and may reinvest in certain scrutinized companies on the scrutinized company list with active business operations in states that sponsor terror if evidence shows that the value of all assets under management by the fund becomes equal to or less than ninety-nine and five-tenths percent (99.5%) of:

- (1) the value of all assets under management by the fund; plus
- (2) the value of the securities of the companies divested by the fund under section 22 of this chapter.

(b) As provided by this section, any cessation of divestment or reinvestment is strictly limited to the minimum steps necessary to avoid the contingency set forth in subsection (a).

(c) For any cessation of divestment, reinvestment, and subsequent ongoing investment by a fund as authorized by this section, the board of the fund shall submit a report in an electronic format under IC 5-14-6 to the legislative council. Notwithstanding IC 5-14-6-4(b)(2), the submission of a report under this subsection to the executive director of the legislative services agency fulfills the board's requirement to send a copy of the report to each member of the general assembly using the member's senate or house of representatives electronic mail address for distribution to the members of the general assembly before any initial reinvestment. A report submitted under this subsection shall be updated annually as applicable, setting forth the reasons and justifications for the decision to cease divestment, reinvest, or remain invested with companies with scrutinized active business operations.

(d) This section does not apply to investment by a fund in the securities of companies that have ceased to have scrutinized business operations.

Sec. 30. (a) Both:

- (1) the state and its officers, agents, and employees; and
- (2) each fund and its board members, executive director, officers, agents, and employees;

are immune from civil liability for any act or omission related to the removal of an asset from the fund under this chapter.

(b) In addition to the immunity provided under subsection (a), both:

- (1) the officers, agents, and employees of the state; and
- (2) the board members, executive director, officers, agents,



1 and employees of a fund;
 2 are entitled to indemnification from the fund for all losses, costs,
 3 and expenses, including reasonable attorney's fees, associated with
 4 defending against any claim or suit relating to an act authorized
 5 under this chapter.

6 Sec. 31. The provisions of this chapter are severable in the
 7 manner provided in IC 1-1-1-8(b).

8 SECTION 2. IC 34-30-2-11.4 IS ADDED TO THE INDIANA
 9 CODE AS A NEW SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2009]: **Sec. 11.4. IC 5-10.2-10-30 (Concerning**
 11 **the state and certain public pension funds for divestment of fund**
 12 **assets authorized by law).**

13 SECTION 3. [EFFECTIVE JULY 1, 2009] (a) This SECTION
 14 applies to IC 5-10.2-10, as added by this act.

15 (b) The definitions in IC 5-10.2 apply throughout this
 16 SECTION.

17 (c) The general assembly finds the following:

18 (1) Mandatory divestment by the funds of the funds' holdings
 19 in certain companies is a measure that should be employed
 20 only under extraordinary circumstances.

21 (2) States that are designated as a state sponsor of terror by
 22 the Secretary of State of the United States are providing
 23 military, financial, political, diplomatic, and organizational
 24 aid to known terrorist groups.

25 (3) Support for terrorism and the acquisition of weapons of
 26 mass destruction represent a grave threat to the security of
 27 the United States and to the citizens of the State of Indiana.

28 (4) The threat from terrorism to the security of the United
 29 States and to the citizens of the state of Indiana constitutes the
 30 extraordinary circumstances necessary for mandatory
 31 divestment by the funds of the funds' holdings in scrutinized
 32 companies with active business operations in a state sponsor
 33 of terror.

